

December 27, 2021

**VIA ECF**

The Honorable Lorna G. Schofield  
United States District Court for the Southern District of New York  
40 Foley Square  
New York, NY 10007

*Catherine McKoy, et al. v. Trump Corp., et al., 1:18-cv-9936 (LGS)*

Dear Judge Schofield:

Pursuant to the Court's August 30, 2021, Fourth Amended Civil Case Management Plan and Scheduling Order (Doc. No. 326 (the "Scheduling Order")), the parties write to update the Court on the status of the above-referenced action since the parties last filed a periodic joint status update letter on November 26, 2021 (Doc. No. 344).

**Party Discovery.** On December 1, 2021, the parties met and conferred regarding certain outstanding discovery and deficiencies that Plaintiffs noted in Defendants' prior productions, including certain metadata issues. Defendants confirmed that they were investigating the scope of the ESI and metadata collected from all agreed-upon custodians over the agreed-upon time period. Defendants also requested additional information relating to the metadata issues.

Plaintiffs followed up by letter on December 7, 2021, providing Defendants with a list of high-priority categories of outstanding non-email documents for production. Plaintiffs also wrote to Defendants by email on December 13, 2021, providing further specifics and examples with respect to the metadata that Plaintiffs noted is deficient or missing in Defendants' production.

On December 13, 2021, Plaintiffs received Defendants' Responses and Objections to the First Request for Production of Documents to All Individual Defendants. The parties continue to meet and confer on all of these issues, including Defendants' responses and objections, and reserve all rights.

As previously reported, Defendants have indicated that they may serve further party and non-party discovery.

**Plaintiffs' nonparty discovery efforts.** Plaintiffs provide the following update on their ongoing correspondence and meet-and-confers with nonparties to resolve outstanding discovery issues. (See Doc. Nos. 232, 260, 265, 273.) Defendants state that, except as expressly noted below, they generally have no knowledge as to the update because Plaintiffs have conducted such nonparty correspondence and meet-and-confers without Defendants' involvement.

*First*, on December 9, 2021, Plaintiffs sent a letter to nonparty American Communications Network ("ACN"). Plaintiffs noted that ACN had yet to produce a single document despite months of meeting and conferring, and stated that Plaintiffs intended to seek relief from the Court unless, by December 16, ACN (1) made a significant production of responsive documents and information, and (2) committed in writing to a timetable for completion of discovery obligations, including email searches. On December 16, 2021, ACN made a production consisting of a three-

page declaration and thirty-six documents, and represented to Plaintiffs that they would continue to produce information and documents on a rolling basis over the course of the next two weeks. Plaintiffs promptly provided ACN's initial production to Defendants the next day. Plaintiffs' review of the materials produced by ACN is ongoing, and Plaintiffs reserve all rights.

In addition, as we have previously informed the Court (Doc. Nos. 348, 349), on December 14, 2021, ACN filed an application with the United States Supreme Court for a stay pending a decision on a forthcoming petition for a writ of certiorari; on December 16, ACN filed the petition itself; and on December 21, the Supreme Court denied the stay application. *See also ACN Opportunity, LLC v. McKoy, et al.*, No. 21A238.

*Second*, as we also have previously reported to the Court (Doc. No. 348), a team of attorneys representing Plaintiffs recently traveled to Los Angeles to begin conducting on-site review of the unaired footage from two episodes of *The Celebrity Apprentice*. Plaintiffs' counsel made efficient progress over four days prior to the holiday closure of Metro-Goldwyn Mayer Studios. Unfortunately, however, as we recently advised the Court, two members of Plaintiffs' review team subsequently tested positive for COVID-19 and, accordingly, it is unlikely that Plaintiffs will be able to continue on-site review in early January as planned. (*See* Doc No. 350; *see also* Doc. No. 351 (setting deadline of January 4, 2021 for any response to Plaintiffs' letter from MGM).)

*Third*, Plaintiffs have continued to meet and confer with counsel for the multiple nonparty Success-branded entities ("Success Entities"). As previously reported to the Court, counsel for the Success Entities has represented that, of the 60,000 documents they identified that are responsive to the search term "Trump," 10,000 fall within the timeframe relevant to the requests in Plaintiffs' subpoenas. However, last week, Counsel for the Success Entities informed Plaintiffs that they are still evaluating their position due to staff changes in their legal department. Plaintiffs continue to meet and confer with the Success Entities to facilitate a production as soon as possible and reserve all rights.

*Fourth*, Plaintiffs are also continuing to meet and confer with The Curetivity Foundation ("Curetivity") to facilitate a production of responsive materials. Curetivity's counsel has represented that they will respond to Plaintiffs' subpoena with an initial production by the end of this calendar year.

The parties will submit their next joint status letter on January 26, 2022.

Respectfully submitted,

/s/ Roberta A. Kaplan

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